



California Fair Political Practices Commission

January 6, 1986

William T. Bullard, Jr.
Attorney at Law
591 Redwood Highway, Suite 2355
Mill Valley, CA 94941

Re: Your Request for Advice,
Our File No. A-85-258

Dear Mr. Bullard:

Thank you for requesting advice on behalf of El Cerrito City Councilmember Anna G. Howe. The facts presented by this request are as follows:

FACTS

Mrs. Howe and her husband own a ten percent (10%) or greater interest in a business entity, Trigon Corporation ("Trigon"), whose sole income is derived from its wholly-owned subsidiary, Astro Numeric Service ("ANS"). ANS does business within the City of El Cerrito and provides gross annual receipts of approximately \$180,000 to Trigon. ANS earns these gross receipts by selling charts containing computer-calculated planetary positions.

ANS is primarily a mail order business. In addition to mail orders, ANS earns an average of \$15 per week in gross receipts from customers who come to its El Cerrito office. Approximately 50% of all ANS sales come from California, including .5% from El Cerrito.

Although the charts sold by ANS are arranged for astrological interpretation, ANS does not provide any interpretative information, astrological or otherwise. Presumably, the charts are sold to astrologers or persons providing astrological interpretation services. ANS customers order from mail order forms. The orders must specify which

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products are requested and must further provide information regarding date, time and place of birth for the specific individuals.

Recently, the El Cerrito City Council began consideration of an ordinance ("proposed ordinance") that would regulate fortunetelling and other activities as defined, including astrology. The proposed ordinance would repeal the existing ordinance which completely bans fortunetelling (including astrology) within the city.

The City Council deliberated and discussed the proposed ordinance, and without taking any action on the proposed ordinance, directed staff to examine various documents, including another city's fortunetelling ordinance ("alternative proposed ordinance"). The alternative proposed ordinance varies in at least one material respect: It only regulates fortunetelling (including astrology) activities where persons purport to influence future events; whereas the proposed ordinance would regulate fortunetelling, (including astrology) regardless of whether the persons purport to influence future events.

As the City Attorney of El Cerrito, it is your interpretation that neither the existing ordinance, nor either of the proposed ordinances, applies to the activities conducted by ANS.

QUESTION

May Mrs. Howe participate in the decision concerning whether to adopt a new ordinance?

ANALYSIS

The Political Reform Act (the "Act")^{1/} provides that a public official may not make, participate in making, or in any way attempt to use his or her position to influence a governmental decision in which he or she has a financial interest. Section 87100. A public official has a financial interest in a decision if it is reasonably foreseeable that the

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise specified.

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decision will have a material financial effect, distinguishable from the effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(c) Any source of income. . . aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made....

Section 87103(a) and (c).

Since ANS is wholly owned by Trigon, Mrs. Howe, as a 10 percent or greater owner of Trigon, is also a 10 percent or greater owner of ANS. Section 82034. This investment interest is undoubtedly worth more than \$1,000. Therefore, Mrs. Howe's disqualification is required if it is reasonably foreseeable that the decision will have a material financial effect upon Trigon or ANS. Section 87103(a).

As a 10 percent or greater owner of ANS, customers of ANS are sources of income to Mrs. Howe on a pro rata basis. Section 82030(a). Given the rather small amount of orders which come from El Cerrito (approximately \$900 per year), it seems unlikely that Mrs. Howe's pro rata share of the income provided to ANS by any one customer during the 12-months prior to the time when the decision is made, will be \$250 or more. However, if so, disqualification is required if it is reasonably foreseeable that the decision will have a material financial effect on the source of income.^{2/} Section 87103(c).

^{2/} If any such sources of income exist and you wish advice on whether disqualification is required with respect to those financial interests, please let us know.

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The question then is whether it is reasonably foreseeable that the decision will have a material financial effect on Trigon or ANS. In general, the effect of a decision is material if it is a "significant" one. 2 Cal. Adm. Code Section 18702(a). The Commission has adopted regulation 2 Cal. Adm. Code Section 18702.2 (copy enclosed) which contains monetary guidelines for determining whether the effect of a decision on a business entity will be considered material.

Based on the information you have provided about Trigon and ANS, the test contained in 2 Cal. Adm. Code Section 18702.2(g) is the appropriate test to apply. Trigon or ANS will be materially affected by the decision if it is reasonably foreseeable that the City Council's decision will affect ANS in any of the following ways:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

2 Cal. Adm. Code Section 18702.2(g)

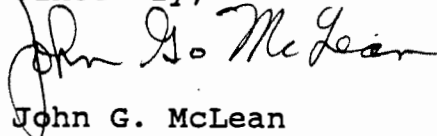
Presumably, the financial impact of this decision upon ANS will be either to (1) maintain the present volume of business coming from El Cerrito by retaining the existing ordinance banning astrology, or to (2) increase the volume of business from El Cerrito by making it legal to practice fortunetelling (including astrology) within the guidelines of one of the proposed ordinances. Given the fact that ANS currently averages about \$90,000 in annual sales statewide and that less than \$1,000 of sales come from customers close enough to El Cerrito to come into ANS's office to complete their orders, it seems unlikely that the decision will have a material financial effect on Trigon or ANS. However, if, because of facts known to Mrs. Howe, it is reasonably foreseeable that the

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decision will meet any of the criteria listed above,
disqualification is required.

I trust that this letter has adequately responded to your
questions. Should you have any further questions regarding
this letter, I may be reached at (916) 322-5901.

Sincerely,

A handwritten signature in cursive script, appearing to read "John G. McLean".

John G. McLean
Counsel
Legal Division

JGM:nwm
Enclosure

WILLIAM T. BULLARD, JR.
ATTORNEY AT LAW
SHELTER POINT BUSINESS CENTER
591 REDWOOD HIGHWAY, SUITE 2355
MILL VALLEY, CALIFORNIA 94941
(415) 381-8600

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December 9, 1985

Robert Leidigh, Esq.
State of California Fair Political
Practices Commission
P. O. Box 807
Sacramento, CA 95804

Re: Advice Letter - Councilmember Anna G. Howe

Dear Mr. Leidigh:

I am the City Attorney for the City Council of El Cerrito; accordingly, my clients include the City Councilmembers of said city. On behalf of Anna G. Howe I am requesting an advice letter pursuant to Gov't Code §83114(b) and Regulation §18329.

Anna G. Howe is a councilmember for the City of El Cerrito and has authorized me to seek this advice letter on her behalf. Mrs. Howe's address is 1401 Atwell Road, El Cerrito, California 94530. Mrs. Howe and I have discussed the procedures in soliciting advice letters and we determined that I shall proceed to obtain such a letter. Accordingly, I hereby declare that Mrs. Howe has provided me with the specific authorization to seek this advice letter.

The facts are as follows:

Mrs. Howe and her husband own a ten percent (10%) or greater interest in a business entity, Trigon Corporation ("Trigon"), whose sole income is derived from Astro Numeric Service ("ANS"). ANS does business within the City of El Cerrito and provides gross annual receipts of approximately \$180,000 to Trigon. ANS earns these gross receipts from a mail order business which sells computer-calculated planetary positions.

Although these planetary positions are arranged for astrological interpretation, ANS does not provide any interpretative information, astrological or otherwise. Thus, the service does not offer any description, meaning nor interpretation of the charts it produces and sells.

Presumably, the planetary positions are sold to astrologers or persons providing astrological interpretation services. These persons order from a mail order form. The orders must specify which products are requested and must further provide information regarding date, time and place of birth for the specific individuals.

In addition to mail orders, there are customers of ANS who come to its El Cerrito office and place orders averaging fifteen (\$15) per week in gross receipts. Approximately fifty percent (50%) of all of the orders for ANS come from California, including .5 percent in El Cerrito.

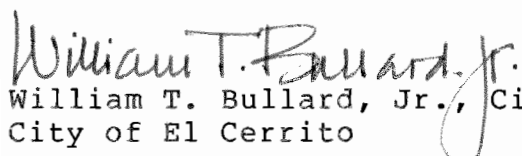
Recently, the El Cerrito City Council began consideration of an ordinance that would regulate fortunetelling and other activities as defined, including astrology. (See highlighted Ordinance, incorporated herein and attached hereto as Exhibit "A"). Said ordinance repeals the present ordinance which completely bans fortunetelling within the city. (See attached Ordinance, incorporated herein as Exhibit "B").

The City Council deliberated and discussed the ordinance shown as Exhibit "A" and, without taking any action on the proposed Ordinance, directed staff to examine various documents, including another city's Fortunetelling Ordinance, attached in pertinent part herein as Exhibit "C". Said Ordinance varies in at least one material respect: It only regulates activities where persons purport to influence future activities for consideration; whereas, the Ordinance proposed as Exhibit "A" regulates all types of activities, including astrology.

An advice letter is requested to determine whether Mrs. Howe may make, participate in making or in any way attempt to use her official position to influence the decision of the City Council of the City of El Cerrito in adopting the Ordinances shown as Exhibits "A" and "C", or an ordinance substantially similar.

It is my understanding that pursuant to Gov't Code §83114(b) and the Administration Regulation thereto, that, unless further facts are required, you shall provide a written response within twenty-one (21) days following receipt of this request.

Very truly yours,


William T. Bullard, Jr., City Attorney
City of El Cerrito

WTB:lj

cc: Anna G. Howe

E2-22

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF EL CERRITO REPEALING CHAPTER 10.40 AND ADDING CHAPTER 6.56 OF THE EL CERRITO MUNICIPAL CODE RELATING TO FORTUNETELLING AND RELATED PRACTICES

THE CITY COUNCIL OF THE CITY OF EL CERRITO, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION I. CHAPTER 10.40 OF THE EL CERRITO MUNICIPAL CODE IS HEREBY REPEALED.

SECTION II. CHAPTER 6.56 FORTUNETELLERS OF THE EL CERRITO MUNICIPAL CODE IS HEREBY ADDED TO READ AS FOLLOWS:

6.56.020 Registration Permit - Required.

No person shall conduct, engage in, carry on, participate in, or practice fortunetelling or cause the same to be done for pay without having first obtained a permit therefor and without having posted and maintained in full force and effect a surety bond as required by this Chapter. The intent of these permit and bond requirements is to provide consumer protection against fraudulent fortunetelling and thereby to promote the general welfare.

6.56.020 Definitions.

A. "Fortunetelling" shall mean and include telling of furtunes, forecasting of future events or furnishing of any information not otherwise obtainable by the ordinary process of knowledge, by means of any occult or psychic power, faculty or force, including but not limited to clairvoyance, clairaudence, cartomancy, psychology, psychometry, phrenology, spirits, tea leaves or other such reading, mediumship, seership, prophecy, augury, astrology, palmistry, necromancy, mind-reading, telepathy, or other craft, art, science, cards, talisman, charm, potion, magnetism, magnetized article or substance, crystal gazing, oriental mysteries or magic, of any kind or nature.

B. "For Pay" shall mean for a fee, reward, donation, loan or receipt of anything of value.

C. Fortunetelling under this Chapter shall be considered a personal service commercial activity for Title 19 of this Code.

6.56.030 Permit Application.

Every natural person who, for pay, actively conducts, engages in, carries on, or practices fortunetelling shall file a separate verified application for a permit with the Chief of Police. The application shall contain:

A. The name, home and business address, and home and business telephone number of the applicant;

B. The record of conviction for violations of the law, excluding minor traffic violations;

C. The fingerprints of the applicant on a form provided by the Police Department;

D. The address, city and state, and the approximate dates where and when the applicant practiced a similar business, either alone or in conjunction with others;

E. An application fee of \$10.00.

6.56.040 Investigation.

Upon the filing of the application, the Chief of Police shall cause such investigation as is necessary to verify the facts contained in the application and any supporting data. The local investigation shall be completed and a report and recommendation made in writing to the Chief of Police within fourteen (14) days after the filing of the application, unless the applicant requests or consents to an extension of the time period. If the report recommends denial of the permit to the applicant, the grounds for the recommended denial shall be set forth therein. At the time of the filing of the report and recommendation with the Chief of Police, a copy thereof shall be served personally or by certified mail on the applicant, accompanied by a notice to the applicant that he or she may request to be heard when the Chief of Police considers the application and report.

6.56.050 Hearing and Decision by Chief of Police.

The Chief of Police shall consider the application and the report and recommendation at a hearing held on or before the seventh (7th) day after the filing of the report and recommendation referred to in Section 6.56.040. Notice of the time and place of the hearing shall be given to all parties by the Chief of Police at least three (3) days prior to the hearing. The applicant for the permit shall be required to attend the hearing. Any interested party shall be heard upon a reasonable request. City shall have the burden of proof to show the permit should be denied. The decision of the Chief of Police to grant

or deny the permit or conditionally grant the permit shall be in writing, and if adverse to the applicant, shall contain findings of the fact and a determination of the issues presented. Unless the applicant agrees in writing to an extension of time, the chief of police shall make its order denying or granting or conditionally granting the permit within twenty-four (24) hours after completion of the hearing on the application for a permit, and shall notify the applicant of its action by personal service or certified mail.

6.56.060 Granting of Permit.

The Chief of Police shall grant the permit if he or she makes all the following findings:

A. All the information contained in the application and supporting data is true;

B. The applicant has not, within the previous six (6) months, been convicted of any violation of this Chapter or any law relating to fraud or moral turpitude;

C. The applicant appeared in person at the hearing;

D. The applicant agrees to abide by and comply with all conditions of the permit and applicable laws.

6.56.070 Permit - Issuance.

If the Chief of Police grants the permit, he shall thereafter issue said permit only after the applicant has paid the license fee required by Section 6.56.080 above and has posted with the City Clerk a surety bond in the principal amount of \$10,000 executed as surety by a good and sufficient corporate surety business in the State of California and as a principal by the applicant. The form of the bond shall have been approved by the City Attorney and shall have been given to insure good faith and fair dealing on the part of the applicant and as a guarantee of indemnity for any and all loss, damage, theft, or other unfair dealings suffered by any patron or customer of the applicant within the City during the term of the permit.

6.56.080 Permit - Term-Renewal.

The term of the permit shall be for no more than the term of a regular business license. A renewal application shall be filed no later than thirty (30) days prior to the expiration of the permit and shall be processed in the same manner as a new application.

6.56.090 Permit - Possession Required.

Every fortuneteller, at all times while operating under the permit issued pursuant to this Chapter, shall have such permit in his/her immediate possession, and shall display such permit upon the demand of any customer or of any police officer of the city.

6.56.100 Permit - Nontransferable.

Permits issued pursuant to this Chapter shall not be assigned or transferred, nor shall they be used by any person other than the person to whom they were issued.

6.56.110 Permit - Revocation.

Upon the discovery of any false or misleading statement in the application or any misrepresentation by the applicant in procuring the permit, or upon the termination of the bond required under Section 6.56.070, or upon the applicant's violation of any provision of this Chapter, the Chief of Police shall conduct a hearing, upon five (5) days written notice to the applicant, to determine whether the permit should be suspended or revoked.

6.56.120 Appeal.

If the Chief of Police shall deny an application for a permit, as provided for in this Chapter, or if such permit already issued shall be suspended or revoked, the applicant may appeal to the council. Such appeal shall be noticed to the clerk of the city within ten (10) days after receipt of notice of denial, suspension or revocation. Upon receipt of such notice of appeal, the council shall hear the matter at its next regular meeting.

6.56.130 Consumer Fraud Information - Posting.

The Chief of Police shall issue the applicant a notice along with the permit. This notice, stating that fraudulent practices should be reported to the City of El Cerrito, shall be posted in a conspicuous place whenever the applicant is operating under the permit.

6.56.140 Exceptions.

A. The provisions of this Chapter shall not apply to any person engaged solely in the business of entertaining the public by demonstrations of mind-reading, mental telepathy, thought conveyance, or the giving of horoscopic readings at public places

and in the presence of and within the hearing of all other persons in attendance, and at which no questions are answered as part of such entertainment except in a manner to permit all persons present at such public place to hear such answers.

B. No person shall be required to pay any fee or take out any permit for conducting or participating in any religious ceremony or service when such person holds a certificate or ordination as a minister, missionary, medium, healer, or clairvoyant (hereinafter collectively referred to as minister) from any bona fide church or religious association maintaining a church and holding regular services and having a creed or set of religious principles that is recognized by all churches of like faith; provided that:

- (1) Except as provided in (3) hereof, the fees, gratuities, emoluments, and profits thereof shall be regularly accounted for and paid solely to or for the benefit of the bona fide church or religious association;
- (2) The minister holding a certificate of ordination from such bona fide church or religious association shall file with the Chief of Police a certified copy of the minister's name, age, street, address, and telephone number in this City where the activity set forth in this subsection is to be conducted;
- (3) Such bona fide church or religious association may to its ministers a salary or compensation based upon a percentage basis, pursuant to an agreement between the church and the minister which is embodied in a resolution and transcribed in the minutes of such church or religious association.

6.56.150 Effect on Business License.

Nothing in this Chapter shall be construed as relieving any person engaged in the fortunetelling business from complying with the provisions of Chapter 4.32 of this Code.

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duty, nor to any person visiting or calling at the residence or place of business of another person for the purpose of transacting any legitimate business. (Prior code § 4315.)

10.36.020 Trespasses upon private property prohibited.

- A. No person shall remain upon any private property or business premises, after being notified by the owner or lessee or other person in charge thereof to remove therefrom.
- B. No person, without permission, express or implied, of the owner or lessee or other person in charge of private property or business premises, shall enter upon such private property or business premises after having been notified by the owner or lessee or other person in charge thereof to keep off or keep away therefrom.
- C. Exceptions. This section shall not apply in any of the following instances:
 1. Where its application results or is coupled with an act prohibited by the Unruh Civil Rights Act or any other provision of law relating to prohibited discrimination against any person on account of color, race, religion, creed, ancestry or national origin;
 2. Where its application results in or is coupled with an act prohibited by Section 365 of the California Penal Code or any other provision of law relating to duties of innkeepers and common carriers;
 3. Where its application would result in an interference with or inhibition of peaceful labor picketing or other lawful labor activities;
 4. Where its application would result in an interference with or inhibition of any other exercise of a constitutionally protected right of freedom of speech such as (but not limited to) peaceful expressions of political or religious opinions, not involving offensive personal conduct; or
 5. Where the person who is upon another's private property or business premises is there under claim or color of legal right.

(Ord. 77-6 § 1, 1977.)

VI. CONSUMER PROTECTION

Chapter 10.40

FORTUNETELLING

Sections:

10.40.010 Prohibited.

10.40.010 Prohibited.

No person, firm or corporation shall engage in, or carry on, business in the city, as an astrologer, seer, fortuneteller, palmist, phrenologist, or clairvoyant for a fee or other remuneration, nor shall such person, firm or corporation accept a fee, remuneration or any representative of value for fortunetelling, soothsaying, clairvoyance, mind reading, phrenology or palm reading in said city. (Prior code § 4326.)

VII. OFFENSES BY OR AGAINST MINORS

Chapter 10.44

MINORS – ACTIVITIES OR PLACES PROHIBITED

Sections:

10.44.010 Curfew.

10.44.020 Minors in hotels.

10.44.030 Proprietor's responsibility.

10.44.010 Curfew.

It is unlawful for any minor under the age of eighteen years not in the company of his parent or guardian or other adult person having care and custody of him, to loiter in or about any public street, park, square or any public place between the hour of ten p.m. and daylight, except that during the period of summer vacation of the public elementary and high schools within the city, the hour of curfew shall be eleven p.m., and on Friday and Saturday nights the hour of curfew shall be twelve midnight. (Ord. 343 N.S. (part), 1974: prior code § 4200.)

COPY

ORDINANCE NO. 85-2

AN ORDINANCE AMENDING ARTICLE IV TO DELETE
THE PROHIBITION AGAINST FORTUNE TELLING AND
TO AUTHORIZE FORTUNE TELLING SUBJECT TO OB-
TAINING A PERMIT AND POSTING A SURETY BOND.

THE CITY COUNCIL OF THE CITY OF CONCORD DOES ORDAIN
AS FOLLOWS:

Section 1. Article IV (Public Welfare, Morals, and
Policy), Chapter 2(1) (Fortune Telling-Prohibited) is de-
leted in its entirety and a new Chapter 2(1) is added to
read: "CHAPTER 2(1) FORTUNE TELLING

"Section 4211. Definitions

"A. Fortune Telling. As used in this chapter, 'fortune
telling' means any act or practice whereby a person pur-
ports to influence future events through any technique
such as astrology, palmistry, phrenology, lifereading,
fortune telling, cartomancey, clairvoyance, clairaуди-
ence, crystal gazing, mediumship, spirit photography,
spirit voices, spirit materialization, etherealization,
prophecy, augury, divination, magic, necromancy, numero-
logy, mesmerism, physiognamy, psychometry, seership,
character reading, by handwriting analysis or other simi-
lar business or art.

B. For Pay. As used in this chapter, 'for pay' shall
mean for a fee, reward, donation, offering, loan, sal-
ary, remuneration, or receipt of anything of value.

Section 4212. Fortune Telling Permit

A. Permit Required. It shall be unlawful for any person
to conduct, engage in, carry on, or practice fortune tel-